



## LETTER TO THE EDITOR

### New Criminal Laws Fail to Address Issues About Unnatural Death Investigations: A Matter of Concern

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Dear Editor,

The introduction of new criminal laws (*Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhinyam*) in India from July 1, 2024, is being hailed as a watershed moment by political analysts and legal experts in our country. However, as forensic pathologists who conducts medico-legal autopsies daily, we can attest that little has changed in the realm of death investigations. We still follow the colonial-era police and magisterial inquest methods for unnatural death investigations in this country.

The provisions under Sections 174 and 176 of the CrPC have been carried forward with minor modifications in Sections 194 and 196 BNSS. For instance, in subsection (2) of Section 194, the word “forthwith” has been replaced by “within

twenty-four hours” for sending the report to the DM and SDM, and the term “man” has been replaced by “person.” Similarly, in Section 196 BNSS, the words “Judicial Magistrate” have been replaced by “Magistrate,” and the Metropolitan Magistrate is excluded. These changes are superficial and fail to address the core issues being faced by the Forensic Medicine specialists and the larger public in India [1].

The 18th Law Commission of India, headed by Justice A.R. Lakshmanan, recommended the introduction of a Coroners Act applicable to the whole of India, way back in 2008, but this advice was not heeded to during the recent criminal law reforms. It is crucial to understand that ‘crime investigation’ and ‘death investigation’ are not synonymous as often perceived by a lot of people. Entrusting the responsibility of conducting inquests into unnatural deaths to police and magistrates,

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who often lack specialized training in death investigations, undermines the scientific approach needed to determine the cause of death and can lead to a miscarriage of justice [2]. In our practice, we have frequently observed that police officers and executive magistrates, who often conduct inquests in our country, sometimes lack the technical expertise required to collect all necessary materials to solve cases effectively or to approach the death investigation process with scientific rigor.

Historically, a coroner was an officer appointed by the king to investigate causes of death. Today, the coroner system is practiced in countries like Australia, the UK, Canada, some states of the USA, and several other nations like Japan as well. A coroner can be a lawyer, a doctor, or both, holding the rank of a first-class judicial magistrate and generally employs the services of forensic pathologists for medico-legal postmortems. It is to be explicitly clarified that a coroner doesn't conduct postmortem examinations in general. They are appointed by the state government to inquire into the cause of death. The major advantage of the coroner system lies in its autonomy, access to power, and ability to represent the will of the people/electorate. As an elected/state nominated official, a coroner has the authority to make independent decisions and stands on equal footing with other local elected/nominated/appointed officials. This position enables coroners to withstand political pressures imposed by other elected/nominated/appointed officials and to compete vigorously for budget allocations. Furthermore, coroners possess subpoena and inquest powers, enhancing their capacity to conduct thorough and unbiased death investigations [3]. However, most countries are transitioning from the

coroner inquest system to the medical examiner model.

The medical examiner system, widely adopted in Western countries, needs to be considered for unnatural death investigations where both the '*cause*' and '*manner*' of death are often determined by the medical examiner. It is an undisputable fact that, ascertaining the 'manner of death' is a cardinal objective of a medico-legal autopsy and it would be appropriate that the autopsy surgeon and not the 'police' or 'magistrate' or 'coroner' decides the 'manner of death' (In Indian setup, fixing the 'manner of death' is usually considered as police business). Unlike the coroner system, the medical examiner system employs physicians, usually forensic pathologists, who have specialized training in death investigation at every step, ensuring a more scientific and precise determination of cause and manner of death. The medical examiner assesses the scene of the crime and has the authority to retain any samples or the entire body for investigation/ancillary investigations, as necessary. The medical examiner's office is also equipped with inhouse analytical toxicology, histopathology and molecular biology laboratories for all ancillary investigations required as part of autopsy. This is extremely helpful in timely transfer and analysis of samples and reduces the turnaround time in *cause of death* certification. In some jurisdictions across the globe, the medical examiner also has a discretionary power to decide whether a full autopsy is required in an unnatural death, or a *cause of death* certificate can be issued without an autopsy.

The medical examiner system is considered better to other forms of death investigating methods owing to the fact that the Chief Medical Examiner's office

establishes uniform protocols and standard operating procedures for each, and every type of case dealt with a medico legal postmortem. It is also well known that board certified pathologists often follow a self-regulated code of professionalism and conduct that upholds transparency and integrity in their practice. Additionally, forensic pathologists have the freedom to invest time and resources in the investigation process and can more effectively secure state budgets compared to coroner systems. One more advantage of the medical examiner system is that the office of the chief medical examiner has the opportunity to make sure that high quality autopsy services are available in each and every part of their jurisdiction by allocating resources with prudence and equality as a cornerstone. Furthermore, it offers significant opportunities for research and development in the field of unnatural deaths, which is feasible only at high-end centres like the chief medical examiner's office, where sufficient workforce and resources are available [4].

Death investigation is a distinct branch of medicine laced with forensic science, blending principles of pathology, toxicology, histology, and criminalistics. It requires a thorough understanding of postmortem changes, injury patterns, and various pathophysiological processes. Professionals involved in death investigation must be adept at integrating medical findings with scene investigation, witness statements, and other forensic evidence to reconstruct the events leading to death [5].

Both the currently practiced police and magistrate inquests for unnatural death investigations in our country are not up to optimal standards. It is necessary to adopt more scientific and robust death

investigation systems for unnatural deaths through genuine criminal law reform. Merely changing the names of acts while retaining their colonial content is akin to putting old wine in new bottles and does not constitute true progress. Implementing a modern death investigation framework, whether through a coroner system with medically trained coroners or a comprehensive medical examiner system, will enhance the accuracy and reliability of death investigations, thereby serving the interests of justice more effectively.

Moreover, the adoption of a medical examiner system where the doctor has a discretion to sign the *cause of death* certificate without autopsy reduces unnecessary medico legal postmortems being conducted in our country in hospital deaths where a Medical Certification of Cause of Death (MCCD) data is available. Not only the medical examiner system is highly independent, but it also fosters a true engagement with the community and ensures a humane approach in giving perfect closures to death investigations unlike the bossy approach of police or revenue authorities.

In the interest of justice, it is imperative that we push for substantive reforms in our death investigation processes, ensuring they are modern, scientific, and effective. India deserves a world class death investigating system which is a long overdue.

## **Statements and Declarations**

### **Conflicts of interest**

The authors declares that they do not have conflict of interest.

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